

HOUSE AMENDMENT NO.\_\_\_\_  
TO  
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Offered By

AMEND House Amendment No.\_\_\_\_ to House Committee Substitute for Senate Bill No. 12 Page 2, Line 30, by deleting all of said line and inserting in lieu thereof the following:

"probation and parole or court.

537.865. An attorney appointed by the court to serve as counsel for an indigent defendant in a criminal case without compensation shall be immune from civil liability, including causes of action for malpractice, for discretionary acts or omissions committed during the course of the representation so long as the actions or omissions are taken in good faith and are not performed with reckless disregard. Immunity from civil liability shall not apply to conduct that is willfully wrong or performed with malice or corruption.

600.042. 1. The director shall:

(1) Direct and supervise the work of the deputy directors and other state public defender office personnel appointed pursuant to this chapter; and he and the chief deputy director may participate in the trial and appeal of criminal actions at the request of the defender or upon order of the commission;

(2) Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;

(3) With the approval of the commission, establish such divisions, facilities and offices and select such professional, technical and other personnel, including investigators, as he deems reasonably necessary for the efficient operation and discharge of the duties of the state public defender system under this chapter;

(4) Administer and coordinate the operations of defender services and be responsible for the overall supervision of all personnel, offices, divisions and facilities of the state public defender system, except that the director shall have no authority to direct or control the legal defense provided by a defender to any person served by the state public defender system;

(5) Develop programs and administer activities to achieve the purposes of this chapter;

(6) Keep and maintain proper financial records with respect to the providing of all public defender services for use in the calculating of direct and indirect costs of any or all aspects of the operation of the state public defender system;

(7) Supervise the training of all public defenders, assistant public defenders, deputy public

Action Taken\_\_\_\_\_ Date \_\_\_\_\_

1 defenders and other personnel and establish such training courses as shall be appropriate;

2 (8) With approval of the commission, promulgate necessary rules, regulations and  
3 instructions consistent with this chapter defining the organization of his office and the  
4 responsibilities of public defenders, assistant public defenders, deputy public defenders and other  
5 personnel;

6 (9) With the approval of the commission, apply for and accept on behalf of the public  
7 defender system any funds which may be offered or which may become available from government  
8 grants, private gifts, donations or bequests or from any other source. Such moneys shall be  
9 deposited in the state general revenue fund;

10 (10) [Contract for legal services with private attorneys on a case-by-case basis and with  
11 assigned counsel as the commission deems necessary considering the needs of the area, for fees  
12 approved and established by the commission;

13 (11) In the event that the prosecuting attorney does not collect and enforce liens and other  
14 judgments owed to the state for services rendered by the state public defender system as set forth in  
15 subsection 3 of section 600.093, then with the approval and on behalf of the commission, contract  
16 with private attorneys for the collection and enforcement of liens and other judgments owed to the  
17 state for services rendered by the state public defender system;

18 (11) Contract out for legal services with private attorneys all nonsexual class C and D  
19 felonies, all nonsexual misdemeanor cases, all traffic cases, and all probation violation cases. The  
20 office of administration shall handle the bidding process for all such contracts in accordance with the  
21 provisions of section 600.052;

22 (12) Shall establish district offices, the boundaries of which shall coincide with existing  
23 judicial circuits. Any district office may contain more than one judicial circuit within its boundaries,  
24 but in no event shall any district office boundary include any geographic region of a judicial circuit  
25 without including the entire judicial circuit.

26 2. No rule or portion of a rule promulgated under the authority of this chapter shall become  
27 effective unless it has been promulgated pursuant to the provisions of section 536.024.

28 3. The director and defenders shall, within guidelines as established by the commission and  
29 as set forth in subsection 4 of this section, accept requests for legal services from eligible persons  
30 entitled to counsel under this chapter or otherwise so entitled under the constitution or laws of the  
31 United States or of the state of Missouri and provide such persons with legal services when, in the  
32 discretion of the director or the defenders, such provision of legal services is appropriate.

33 4. Except as provided in subsection 5 of this section, the director and defenders shall provide  
34 legal services to an eligible person:

35 (1) Who is detained or charged with a class A or B felony, including appeals from a  
36 conviction in such a case;

37 (2) [Who is detained or charged with a misdemeanor which will probably result in  
38 confinement in the county jail upon conviction, including appeals from a conviction in such a case;

39 (3) Who is detained or charged with a violation of probation or parole;

40 (4) Who is detained or charged with any sexual offense;

41 (3) Who has been taken into custody pursuant to section 632.489, including appeals from a  
42 determination that the person is a sexually violent predator and petitions for release, notwithstanding  
43 any provisions of law to the contrary;

44 [(5)] (4) For whom the federal constitution or the state constitution requires the appointment  
45 of counsel; and

46 [(6)] (5) For whom, in a case in which he faces a loss or deprivation of liberty, any law of  
47 this state requires the appointment of counsel; however, the director and the defenders shall not be  
48 required to provide legal services to persons charged with violations of county or municipal

ordinances.

5. The director may:

(1) [Delegate the legal representation of any person to any member of the state bar of Missouri;

(2)] Designate persons as representatives of the director for the purpose of making indigency determinations and assigning counsel;

(2) Contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

6. The director and defenders shall not provide legal services or contract out for legal services with private attorneys for the following types of cases:

(1) Motions under Rule 24.035 or 29.15 claiming ineffective assistance of counsel; or

(2) Representation of any crime victim or witness.

7. The public defender shall provide legal services in those cases in which a private attorney who has a contract for the provision of legal services under section 600.052 has a conflict of interest.

600.044. Except as provided in subdivision (2) of subsection 5 of section 600.042, a defender who undertakes to represent an eligible person shall continue to do so at every stage of the case or proceeding, including the filing of a motion for new trial and the processing, briefing, and argument of an appeal, until the defender is relieved of his duties by the director or is permitted by a court to withdraw.

600.052. The office of administration shall award contracts under this section through a competitive bidding process with the approval of the presiding judge of the judicial circuit where the services are rendered. The competitive bidding process shall be designed to award contracts to the lowest and best bidder. In determining the lowest and best bidder, priority shall be given to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The office of administration shall also administer all contracts made by the director, including contracts for cases which are conflicts of the public defender. The office of administration shall establish a quality assurance program, with the assistance of each presiding circuit judge, to ensure that defendants are being provided quality representation by private attorneys awarded contracts under this section. The office of administration may promulgate rules and regulations necessary to carry out the provisions of this subsection.

600.053. 18 C.S.R. 10-4.010 is hereby invalidated and is null and void. The public defender may not refuse to provide representation required under this chapter without prior approval from a court of competent jurisdiction.

600.090. 1. (1) If a person is determined to be eligible for the services provided by the state public defender system and if, at the time such determination is made, he is able to provide a limited cash contribution toward the cost of his representation without imposing a substantial hardship upon himself or his dependents, such contribution shall be required as a condition of his representation by the state public defender system.

(2) If at any time, either during or after the disposition of his case, such defendant becomes financially able to meet all or some part of the cost of services rendered to him, he shall be required to reimburse the commission in such amounts as he can reasonably pay, either by a single payment or by installments of reasonable amounts, in accordance with a schedule of charges for public defender services prepared by the commission.

(3) No difficulty or failure in the making of such payment shall reduce or in any way affect the rendering of public defender services to such persons.

2. (1) The reasonable value of the services rendered to a defendant pursuant to sections 600.011 to 600.048 and 600.086 to 600.096 may in all cases be a lien on any and all property to

1 which the defendant shall have or acquire an interest. The public defender shall effectuate such lien  
2 whenever the reasonable value of the services rendered to a defendant appears to exceed one hundred  
3 fifty dollars and may effectuate such lien where the reasonable value of those services appears to be  
4 less than one hundred fifty dollars.

5 (2) To effectuate such a lien, the public defender shall, prior to the final disposition of the  
6 case or within ten days thereafter, file a notice of lien setting forth the services rendered to the  
7 defendant and a claim for the reasonable value of such services with the clerk of the circuit court.  
8 The defendant shall be personally served with a copy of such notice of lien. The court shall rule on  
9 whether all or any part of the claim shall be allowed. The portion of the claim approved by the court  
10 as the value of defender services which has been provided to the defendant shall be a judgment at  
11 law. The public defender shall not be required to pay filing or recording fees for or relating to such  
12 claim.

13 (3) Such judgment shall be enforceable in the name of the state on behalf of the commission  
14 by the prosecuting attorney of the circuit in which the judgment was entered.

15 (4) The prosecuting attorney may compromise and make settlement of, or, with the  
16 concurrence of the director, forego any claims for services performed for any person pursuant to this  
17 chapter whenever the financial circumstances of such person are such that the best interests of the  
18 state will be served by such action.

19 (5) The public defender shall pay the prosecuting or circuit attorney a collection fee of  
20 twenty percent of the funds collected by the prosecuting or circuit attorney on behalf of the public  
21 defender. This collection fee shall be deposited in the same manner as collection fees are deposited  
22 for delinquent taxes under section 136.150 as follows: the collection fee shall be deposited in the  
23 county treasury of the circuit or prosecuting attorney who collected such funds, with one-half of such  
24 collection fee being designated for the use of the prosecuting or circuit attorney's office and one-half  
25 to be expended as the county shall determine.

26 3. [The commission may contract with] If the prosecuting attorney does not take action to  
27 enforce the judgment within ninety days of entry, then the commission may contract with private  
28 collection agencies or private attorneys for the collection and enforcement of liens and other  
29 judgments owed to the state for services rendered by the state public defender system.

30 4. The lien created by this section shall be from the time filed in the court by the defender a  
31 charge or claim against any assets of the defendant; provided further that the same shall be served  
32 upon the person in possession of the assets or shall be recorded in the office of the recorder of deeds  
33 in the county in which the person resides or in which the assets are located.

34 5. Except as provided in subdivision (5) of subsection 2 of this section, funds collected  
35 pursuant to this section and section 600.093 shall be credited to the "Legal Defense and Defender  
36 Fund" which is hereby created. The moneys credited to the legal defense and defender fund shall be  
37 used for the purpose of training public defenders, assistant public defenders, deputy public defenders  
38 and other personnel pursuant to subdivision (7) of subsection 1 of section 600.042, and may be used  
39 to pay for expert witness fees, the costs of depositions, travel expenses incurred by witnesses in case  
40 preparation and trial, expenses incurred for changes of venue and for other lawful expenses as  
41 authorized by the public defender commission.

42 6. The state treasurer shall be the custodian of the legal defense and defender fund, moneys  
43 in the legal defense and defender fund shall be deposited the same as are other state funds, and any  
44 interest accruing to the legal defense and defender fund shall be added to the legal defense and  
45 defender fund. The legal defense and defender fund shall be subject to audit, the same as other state  
46 funds and accounts, and shall be protected by the general bond given by the state treasurer.

47 7. Upon the request of the director of the office of state public defender, the commissioner of  
48 administration shall approve disbursements from the legal defense and defender fund. The legal

1 defense and defender fund shall be funded annually by appropriation, but any unexpended balance in  
2 the fund at the end of the appropriation period not in excess of one hundred and fifty thousand  
3 dollars shall be exempt from the provisions of section 33.080, specifically as they relate to the  
4 transfer of fund balances to the general revenue, and shall be the amount of the fund at the beginning  
5 of the appropriation period next immediately following."; and

6  
7 "Further amend said bill, Page 14, Section B, Line 2, by inserting after all of said section the  
8 following:

9  
10 "Section C. Because immediate action is necessary to ensure the quality of representation of  
11 indigent criminal defendants the enactment of sections 537.865 and 600.053 of this act is deemed  
12 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is  
13 hereby declared to be an emergency act within the meaning of the constitution, and the enactment of  
14 sections 537.865 and 600.053 of this act shall be in full force and effect upon its passage and  
15 approval."; and"; and

16  
17 Further amend said bill by amending the title, enacting clause, and intersectional references  
18 accordingly.  
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